

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

ROBERT LEE DEFOY, *
Petitioner * C.A. No.
vs. * 00-110 ERIE
Superintendent JOHN M.* District Judge
MCCULLOUGH, Att. * McLaughlin
General D. MICHAEL *
FISHER, PENNSYLVANIA * Magistrate
BOARD OF PROBATION AND * Judge Baxter
PAROLE, *
Respondents *

* * * * *

COPY

DEPOSITION OF

JOHN MCCULLOUGH

August 16, 2006

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1 DEPOSITION
2 OF
3 JOHN M. MCCULLOUGH, taken on behalf
4 of the Petitioner herein, pursuant to
5 the Rules of Civil Procedure, taken
6 before me, the undersigned, Lori A.
7 Behe, a Court Reporter and Notary
8 Public in and for the Commonwealth of
9 Pennsylvania, at the offices of
10 Keystone Building, Office of Attorney
11 General, 444 East College Avenue,
12 Suite 440, State College,
13 Pennsylvania, on Wednesday, August
14 16, 2006 beginning at 9:01 a.m.

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1 I N D E X
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1 P R O C E E D I N G S

2 -----
3 JOHN M. MCCULLOUGH, HAVING FIRST BEEN
4 DULY SWORN, TESTIFIED AS FOLLOWS:
5 -----

6 EXAMINATION

7 BY ATTORNEY PATTON:

8 Q. Mr. McCullough, my name is Tom
9 Patton. I work for the Federal
10 Public Defenders office and I
11 represent Mr. Defoy, who's the
12 Petitioner in this case.

13 I'm just going to ask you some
14 questions. Some just to get some
15 general background of how the
16 Department of Corrections works,
17 specifically with the Department's
18 role in preparing for parole hearings
19 for inmates that are housed with the
20 Departments, and then ask you some
21 more specific questions about Mr.
22 Defoy's case.

23 A. Certainly.

24 Q. Right now, how are you
25 employed?

1 A. I retired in 2004 from the
2 Department of Corrections. I am a
3 part-time instructor at Penn State
4 and at the Department of Corrections
5 training academy.

6 Q. How long did you work for the
7 Department of Corrections?

8 A. From 1974 until 2004.

9 Q. Could you give me a run down
10 of the positions you held with the
11 Department, maybe starting
12 chronologically from when you started
13 with the Department of Corrections on
14 until your retirement.

15 Q. I was the Director of
16 Treatment at Rockview from '74 until
17 '90. Director of Treatment with
18 what's now called the CCPM position
19 the classification program manager or
20 something like that. In '90 I was
21 promoted to the deputy superintendent
22 of Camp Hill following the riots. I
23 was there six or seven months, came
24 back to Rockview as a deputy
25 superintendent for treatment,

1 promoted to Houtzdale in '95 as a
2 superintendent, was the
3 superintendent there until 2003.
4 From 2002 to 2003 I was the
5 superintendent of Houtzdale, but I
6 was also the supervising
7 superintendent over
8 Huntingdon/Smithfield in Cresson. In
9 2003 I was promoted deputy secretary
10 for the western region and then I
11 retired after that year.

12 Q. Okay. With your work when you
13 started off the program, I forgot the
14 title you had ---.

15 A. It was Director of Treatment
16 it was called.

17 Q. Director of Treatment, in that
18 position were you involved with
19 helping to establish the prescriptive
20 programming plans for inmates that
21 would come into the institution?

22 A. Back then --- even back then
23 it wasn't centralized. Generally,
24 the counselors did the prescription
25 program plans. At that position, I

1 supervised the counselors and the
2 psychologists.

3 Q. Could you just tell me
4 generally how the counselors would go
5 about creating --- well, first, I
6 guess we ought to --- can you tell me
7 what a prescriptive program plan.

8 A. Prescriptive programming is
9 when the inmate first comes in he's
10 given a plan. And this has changed
11 over the years, but the concept
12 hasn't changed, but the paperwork
13 has. And the plan, basically,
14 outlines for him what he needs to do.
15 All in the way they get parole or
16 commutation or to get lower security
17 status or whatever. Prescription
18 program plan is going to include his
19 security level, job and housing
20 assignment and any other programs
21 that he might have to go to,
22 education, vocation or counseling
23 program.

24 Q. Okay. So when an inmate comes
25 into an individual institution ---

1 A. Uh-huh (yes).

2 Q. --- that they're going to,
3 designated to be housed at, ---

4 A. Right.

5 Q. --- is that institution in
6 charge of creating the prescriptive
7 programming plan?

8 A. Yes.

9 Q. Is that handled by the --- at
10 the counselor level?

11 A. Yeah, it's handled at the
12 counselor level now. It would be
13 handled by the counselor, but the
14 unit manager might also have a part
15 in it.

16 Q. Okay. What's the difference
17 between a counselor and a unit
18 manager?

19 A. A unit manager is the head of
20 a cell block. It's a manager of a
21 cell block. Could be an ex ---
22 former counselor, could be a former
23 officer. For instance, at Houtzdale,
24 which is the institution in question,
25 unit manager would have a unit of

12

1 about 270, 265 inmates, two pods,
2 there's a counselor on either side
3 and a clerk to supervise the
4 counselor and the clerk and all the
5 officers in that block.

6 Q. Okay.

7 A. And some unit managers choose
8 in the prescription program to have
9 the blocks where the unit manager and
10 the counselor do it. But it's the
11 counselor that sits down with the
12 inmate and does whatever he needs to
13 do.

14 Q. Okay. For an inmate that is
15 coming in on a revocation of parole,
16 will the counselor take into
17 consideration in creating the
18 prescriptive programming plans any
19 programs that the Board may recommend
20 in a green sheet revoking the
21 person's parole?

22 A. That's a sore spot between the
23 Department of Corrections and the
24 Board of Parole. I've always thought
25 that it's our responsibility because

13

1 we know the inmate better to make ---
2 to decide what the guy should go
3 through. The Board will make
4 recommendations. If the
5 recommendations are reasonable to us
6 we will follow them.

7 Q. But if you find them not to be
8 reasonable you won't necessarily
9 follow them?

10 A. Right. And we might write the
11 Board and say, look, this isn't
12 right. He doesn't need this or we
13 don't have this program or we think
14 he needs whatever. But this can be
15 an ongoing sore point between the
16 two. Most of the time, however, the
17 Board leaves it up to us.

18 Q. Okay. So would it be accurate
19 to say that if an inmate comes in to
20 serve some parole revocation time and
21 the Board has stated in the green
22 sheet that they want the inmate to
23 participate in anger management or
24 sex offender treatment that the
25 Department of Corrections does not

14

1 feel that they are 100 percent bound
2 to include those programs in the
3 inmate prescriptive programming plan?

4 A. That's correct. It's up to us
5 to make the assessment. Now, the
6 problem here is this, is when they
7 say something in their green sheet if
8 you want to get the guy paroled, you
9 know, I mean, that's --- and say you
10 have to gauge what matters and what
11 doesn't matter, if they come through
12 and say go to Alcohol Anonymous,
13 well, okay, go. But if it's
14 something that we would think to be
15 unfair or unnecessary then we would
16 challenge them.

17 Q. Okay. So your answer seems to
18 indicate that there's a realization
19 in the Department of Corrections with
20 the counselors and everybody involved
21 in creating a prescriptive
22 programming plan that if the Board
23 has recommended certain treatments or
24 classes that the --- that they want
25 to see the inmate participate in,

1 that for the individual to have a
2 good chance of actually being re-
3 paroled they need to participate in
4 those ---

5 A. Exactly.

6 Q. --- activities?

7 A. Exactly.

8 Q. Has your experience shown that
9 if an inmate does not participate in
10 the programs that the Board may
11 identify in a green sheet that that
12 is going to have a detrimental impact
13 on the person's ability to get
14 paroled?

15 A. It depends on the crime. Most
16 of the time the Board was regional.
17 For instance, if they come through
18 and say this guy has to get --- a
19 good example would be Gamblers
20 Anonymous which Houtzdale didn't
21 have. We say, we don't have Gamblers
22 Anonymous. He can't participate in
23 this, but he participated in this.
24 And most of the time if you explain
25 your reasoning the Board would accept

1 that.

2 Q. Okay. You used the Gambling
3 Anonymous ---

4 A. Right.

5 Q. --- as one example. Were
6 there examples of some programs where
7 the Board recommended it and the guy
8 didn't do it, history and experience
9 showed the guy wasn't going to get
10 paroled?

11 A. Yeah, that's true.

12 Q. Sex offender is one of those
13 programs?

14 A. Sex offender is one where it
15 is pretty much set. And it's
16 understood by the Department of
17 Corrections and by the Board.

18 Q. But if you're told to take sex
19 offender and you don't you're not
20 going to get paroled?

21 A. That's correct.

22 Q. And is that --- would it be
23 fair to say that the counselors would
24 probably pass that information on to
25 an inmate when they're talking to an

1 inmate about the prescriptive
2 programming plan and working with the
3 inmate to try and get him situated so
4 that they have a shot at getting
5 paroled?

6 A. They're told that up front or
7 at least they should be.

8 Q. That if the Board has
9 recommended sex offender treatment
10 and they don't do it they're not
11 going to get paroled?

12 A. Right or we recommend sex
13 offender treatment and they don't do
14 it you're not going to get our
15 recommendation.

16 Q. You mentioned the inmate not
17 getting your recommendation.

18 A. Right.

19 Q. Is it accurate to say that the
20 Department of Corrections provides
21 the Board with a --- an opinion for
22 each individual who comes up for
23 parole or re-parole consideration as
24 to whether or not the Department of
25 Corrections supports release or

1 nonrelaease?

2 A. That's correct.

3 Q. And how does the Department of
4 Corrections go about reaching its
5 conclusion as to what its
6 recommendation is going to be?

7 A. Okay. They have the
8 prescription program plan. At a
9 certain time before his parole
10 minimum, let's say his parole minimum
11 is December --- it's December 1st of
12 2006. I don't know what it is now,
13 it was three months or six months
14 prior to that minimum the staff would
15 --- the institution staff, the unit
16 manager, unit staff. They call the
17 inmate in front of them and they'd
18 interview him and they'd see how he
19 was doing. They go over the
20 prescription program plan. Does he
21 have any misconducts or are his work
22 and housing reports good and did he
23 follow his plan. Did he follow his
24 prescription program plan? And based
25 on that and their assessment of the

1 inmate then they would recommend for
2 or against.

3 Q. Once they make --- the unit
4 staff makes that recommendation does
5 that get passed on to the
6 superintendent for the
7 superintendent's either approval or
8 non-approval?

9 A. Yeah. It goes from the unit
10 manager to the --- it's a long
11 process. It goes from the unit
12 manager to the CCPM ---.

13 Q. Which is?

14 A. Correction something Program
15 Manager. It used to be the old
16 director of treatment.

17 Q. Okay.

18 A. It goes to both deputy
19 superintendents and then it goes to
20 the superintendent for the final
21 decision. And it comes to him on
22 what's called a vote sheet because
23 they actually vote.

24 Q. Does the superintendent
25 actually have the final word on what

20

1 the recommendation of the Department
2 of Corrections is to the Parole
3 Board?

4 A. That's correct. If everybody
5 voted yes and the superintendent
6 voted no, no is the recommendation.
7 If everybody voted no and the
8 superintendent voted yes, yes the
9 recommendation.

10 Q. You had --- I asked you ---
11 you talked some about if the Board
12 had recommended sex offender
13 treatment and an inmate hadn't done
14 it, it was the understanding of the
15 Department that you guys wouldn't
16 make a recommendation. Let me ask
17 that differently.

18 Is it accurate to say that the
19 Board can recommend sex offender
20 treatment which could be separate
21 from the Department of Corrections
22 itself determining that sex offender
23 treatment is called for?

24 A. They could do that. That's
25 unusual. And generally, the sex

21

1 offender treatment if they say has to
2 have it we would go along with that.

3 Q. Okay.

4 A. There are situations in which
5 we wouldn't, for instance, if there
6 was no sex offense. There was a
7 couple domestic cases where we saw it
8 more as an anger assault thing and,
9 you know, and we wouldn't, but in
10 general, if the Board says he shall
11 have sex offender treatment most of
12 the time we've already agreed with
13 that.

14 Q. In the instances where the
15 Department disagreed with the Parole
16 Board's recommendation of sex
17 offender, would the Department
18 communicate with the Parole Board to
19 try and explain why there was the
20 difference of opinion?

21 A. Yes. We would use --- there's
22 two ways of doing that. You could
23 challenge the green sheet. The green
24 sheet comes back saying you will and
25 we could write back to the Board and

1 say, wait a minute. This isn't
2 right. This guy never did this
3 crime. We see this in a different
4 way. The other way to do it is we
5 can take him back up for parole and
6 say, we didn't --- he satisfied our
7 prescription program plan and here's
8 why and here's why we think he should
9 go home. We understand your
10 recommendation, this is why we didn't
11 do it. So there's a couple of ways
12 to get your own opinion in there.

13 Q. Okay. In your experience if
14 the Board disagrees with the
15 Department's assessment of whether or
16 not sex offender treatment had been
17 called for, were the inmates paroled
18 or re-paroled?

19 A. The cases are so few in this
20 kind of --- in this kind of instance.
21 I do remember a domestic thing where
22 it really --- there was no sex
23 offense involved where they agreed to
24 let them go. But by and large, with
25 sex offenders the concurrence is

1 there and they're not going to let
2 them go. A lot of times they won't
3 let them go even when you do
4 recommend it.

5 Q. Is the --- you guys, the
6 Department of Corrections, that is,
7 use what's referred to as a DC-13A
8 form to convey your recommendation as
9 to whether the inmate should be
10 paroled or not paroled to the Board.
11 Is that the form?

12 A. That's what's used, yes.

13 Q. Okay. And that would be the
14 form that is done up by the unit
15 staff that you talked about and then
16 reviewed by the multiple layers of
17 review and ultimately reviewed by the
18 superintendent?

19 A. That's correct.

20 Q. Okay. I want to talk to you
21 some now about the particular --- Mr.
22 Defoy's case.

23 A. Uh-huh (yes).

24 Q. And some times that he came up
25 for review by the Parole Board while

1 he was housed at Houtzdale while you
2 were the superintendent.

3 A. Uh-huh (yes).

4 Q. I'd like to show you on
5 Petitioner's Exhibit A. Can you
6 explain to me what Petitioner's
7 Exhibit A is?

8 (Petitioner's Exhibit A
9 marked for
10 identification.)

11 A. That is a reclassification
12 summary. It is a parole summary.
13 And it was a document prepared for
14 the Parole Board.

15 BY ATTORNEY PATTON:

16 Q. Okay. Is it this DC-13A form
17 that we've referred to?

18 A. Right.

19 Q. Okay. Now, is it accurate to
20 say that this is the DC-13A form that
21 was done up for Mr. Defoy. It looks
22 like it was prepared at Houtzdale on
23 May 7th of 1997?

24 A. That's correct and I signed
25 it.

1 Q. Okay. Now, the --- if you
2 look on page two of that form under
3 psychological and psychiatric, does
4 it note that a mental health
5 evaluation had not been requested by
6 the Pennsylvania Board of Probation
7 and Parole?

8 A. Right.

9 Q. And then underneath that under
10 the heading of sex offender
11 treatment, it states Mr. Defoy was
12 prescribed sex offender treatment and
13 he refused to participate under the
14 premise that his case was under
15 appeal.

16 A. Right.

17 Q. When it says Mr. Defoy was
18 prescribed sex offender treatment, is
19 there any way for you to know based
20 on your experience in that language
21 whether or not they're saying who
22 prescribed him for sex offender
23 treatment?

24 A. It would be the counselor, the
25 unit manager. One or the other or

1 both.

2 Q. Okay. So this form stating
3 that Mr. Defoy had been prescribed
4 sex offender treatment was a
5 representation that the Department
6 itself had stated that Mr. Defoy
7 should do sex offender treatment as
8 part ---

9 A. Right.

10 Q. --- of his ---?

11 A. Right.

12 Q. Okay. Now, Mr. Defoy did not
13 complete the sex offender treatment.

14 A. Correct.

15 Q. But even though he had not
16 completed the sex offender treatment
17 program, he had been earning positive
18 housing and work reports; ---

19 A. Right.

20 Q. --- correct? And based ---
21 according to the form based on Mr.
22 Defoy's positive adjustment the staff
23 supported parole to --- a state
24 detainer sentence that Mr. Defoy had
25 on him and ---

1 A. Right.

2 Q. --- and you agreed with that;
3 correct?

4 A. Right. Uh-huh (yes).

5 Q. Okay. And so, at least, for
6 when Mr. Defoy came up for parole
7 consideration in 1997, the Department
8 of Corrections supported his release
9 to the detainer sentence that was on
10 him?

11 A. Right.

12 Q. Even though he had not
13 participated in sex offender
14 treatment?

15 A. Right. That isn't unusual.
16 In some ways it's an unusual
17 recommendation, but considering he
18 had all the other time left, he's
19 done well, let him go to his next
20 sentence and he --. The other thing
21 is the time frame on sex offender
22 programs, but I think it's about two
23 years long. So they had plenty of
24 time to complete it.

25 Q. Okay. I'll show you

28

1 Petitioner's Exhibit B. It's one for
2 '98. Does that appear to be, at
3 least, a copy of the DC-13A
4 Reclassification Summary prepared for
5 Mr. Defoy by the Department of
6 Corrections on May 18th of 1998?

7 (Petitioner's Exhibit B
8 marked for
9 identification.)

10 A. That's correct. That's our
11 summary.

12 BY ATTORNEY PATTON:

13 Q. Okay. And again on page two
14 does it indicate that sex offender
15 programming had been recommended,
16 however that Mr. Defoy had --- was
17 not interested in participating?

18 A. Correct.

19 Q. But also the report indicates
20 that Mr. Defoy had had no misconducts
21 since his last review and had earned
22 positive housing and work reports?

23 A. Correct.

24 Q. And therefore the staff
25 recommended and you agree that the

1 Department's recommended ---
2 recommendation, excuse me, to the
3 Board was to re-parole to the state
4 detainer sentence?

5 A. You're on the one in 1998.

6 Q. Yeah.

7 A. Yeah, we did recommend that he
8 be re-paroled then. But he had been
9 turned down by the Board already, at
10 that point.

11 Q. Correct. He had appeared in
12 front of the Board in '97, had been
13 denied, was reset for a hearing in
14 '98.

15 A. Right. We recommended him
16 again.

17 Q. Petitioner's Exhibit C is a
18 group of documents.

19 (Petitioner's Exhibit C
20 marked for
21 identification.)

22 A. Okay.

23 BY ATTORNEY PATTON:

24 Q. We're referring it when Mr.
25 --- regarding when Mr. Defoy came up

30

1 for another parole hearing in 2000.

2 A. Yep, I remember these.

3 Q. Now, the first page of Exhibit
4 C, it appears to be a letter from you
5 to the Chairman --- Chairman William
6 Ward of the Pennsylvania Board of
7 Probation and Parole?

8 A. Right.

9 Q. Okay. And the letter conveyed
10 to the Board the Department's
11 recommendation as to whether or not
12 Mr. Defoy should be re-paroled when
13 he was going to be considered by the
14 Board in August of 2000?

15 A. Right. Yes.

16 Q. The letter indicates that Mr.
17 Defoy had continued to earn above
18 average housing and work reports and
19 goes on to state, however, he
20 continues to refuse to participate in
21 sex offender treatment, therefore
22 staff continues to not support
23 parole; is that accurate?

24 A. That's correct.

25 Q. Okay. And if --- then go to,

1 I guess, it would be the third page,
2 would be the first page of the DC-13A
3 form that the Department would have
4 filled out in April 25 of 2000.

5 A. Right.

6 Q. Okay. And on the last page of
7 that document under staff
8 recommendation does it state that Mr.
9 Defoy refuses to participate in sex
10 offender treatment, and that based
11 upon his refusal to participate in
12 sex offender treatment staff does not
13 support parole?

14 A. Correct.

15 Q. And that you agreed with that
16 recommendation not to parole?

17 A. Correct.

18 Q. Can you explain why the first
19 --- in '97 and '98 when Mr. Defoy
20 came up for parole hearings the staff
21 and yourself would have agreed or
22 recommended that he should be
23 released despite the fact that he had
24 not participated in sex offender
25 treatment program, but in 2000 under

32

1 the same circumstances the Department
2 of Corrections recommendation was
3 that Mr. Defoy not be released
4 because he had not participated in
5 sex offender treatment?

6 A. Okay. I can't answer that
7 specifically, but I can give you
8 generally why that may have happened.

9 Q. Okay.

10 A. Okay. Because I simply don't
11 remember.

12 Q. Sure.

13 A. One is we may just have --- if
14 the Board is going to be adamant in
15 that --- I mean, he does have a ---
16 he is a convicted sex offender at
17 that time, we're just going to go
18 along with that because eventually
19 he's got --- he has to face going to
20 that program. But the second reason
21 --- so that --- my guess is that's
22 what it is that, you know, the
23 Board's saying no, no, no he has to
24 go and as far as we're concerned at
25 that point, eventually he has to go

1 anyway and we're going to --- we
2 agree with that.

3 The second thing is I don't
4 know the time frames, but if you
5 remember in the State of Pennsylvania
6 there was some serious sex crimes,
7 there was a major tightening of
8 parole and that may have occurred
9 during that period, too. Because
10 what's happen is over time the amount
11 of sex offenders paroled has
12 narrowed.

13 The third thing could be, and
14 I do not know this, but we could go
15 through it, is whether the
16 psychological reports or something
17 would indicate something different, a
18 nastier attitude. Whether there was
19 new light on the facts of crime. It
20 could be any one of them.

21 Q. Actually, the report done in
22 2000 indicated that he presented a
23 minimal risk, but he hadn't
24 participated in sex offender
25 treatment program and therefore ---

1 and the report didn't say that he
2 needed to participate in sex offender
3 program.

4 A. It is standard either are
5 acceding to the Parole Board or the
6 change which happens all the time
7 with different types of offenders of
8 tightening up parole.

9 Q. When you talk about a change
10 in tightening up parole, is that a
11 change that's communicated to the
12 Department of Corrections by the
13 Parole Board or a change in --- an
14 internal change within the Department
15 of Corrections as to how it's going
16 to make its recommendations to the
17 Parole Board?

18 A. It can be both. It can be
19 both. One of the things you tell
20 though is when you start seeing the
21 green sheets, such as the parole
22 grants, the parole action is coming
23 back, no, no, no. And also if you
24 read the newspapers. And this has
25 happened over time. It happened with

1 lifers, with commutation. It happens
2 with DUIs, murder by --- homicide by
3 motor vehicle you see people not
4 getting out that used to get out.

5 Q. Okay. Are these changes that
6 you're referring to --- well, let's
7 focus on the change with sex
8 offenders.

9 A. Sir, may I go back one?

10 Q. Sure.

11 A. There's another reason I want
12 to tell you that would intervene in a
13 recommendation. We wouldn't know
14 this, but we would sense it and that
15 is the victim's objection. We're not
16 allowed to tell the inmate that. I
17 would only know that for pre-release.
18 The Parole Board, however, would know
19 it. They have to skirt that issue
20 and while we're never told
21 officially, if I --- I can read a
22 green sheet and tell whether all of a
23 sudden there's a victim's objection.
24 And that's another thing --- and
25 sometimes in these cases, I don't

36

1 know whether it's in this one, you'll
2 get a late objection from a victim
3 and that will, in many cases, stop a
4 parole or stop a pre-release.

5 Q. In that situation, though, you
6 would expect to see some change in
7 the green --- in the green sheets
8 that were coming down that one would
9 be different --- worded
10 differently ---

11 A. Right.

12 Q. --- than the prior green
13 sheets?

14 A. They would go to a very
15 generalized type of thing. Release
16 of you would deprecate the
17 seriousness of your offense or
18 justice is served. One of these
19 things that is global but protects
20 the victim as we have to do by law.
21 So that can intervene at any --- in
22 any stage in parole.

23 Q. Okay. Does that, though, have
24 any impact on the Department of
25 Corrections recommendation to the

1 Board?

2 A. You see, we're not allowed to
3 know that. Often, however, the
4 victim would call me or somebody
5 would call me or the Defense attorney
6 --- the DA would call me and say,
7 look, this is, you know, in that
8 case, yes, it would. Particularly if
9 it was in writing. But on the Board,
10 if I have no way of knowing, my
11 feeling was that's the Board's
12 determination and we would,
13 generally, still support. Unless we
14 got some new --- there's new
15 information that the crime was
16 particularly odious or worse than we
17 thought or something like that.

18 Q. Okay. Is it fair to say you
19 don't have any recollections with
20 regards to Mr. Defoy, if that
21 happened or do you have any
22 recollection of Mr. Defoy at all?

23 A. I remember him vaguely. I do
24 remember his wife because I think I
25 talked to her on the phone. He was

1 hooked up for awhile with an attorney
2 by the name of Grazella Barra
3 (phonetic) who was a friend's of
4 Doris who, by the way, I like
5 Grazella, although she's nutty. But
6 that's why I'm being general on why
7 we would switch. Because I really
8 don't remember the specifics of why
9 we did that.

10 Q. Okay. You had talked some
11 about how just attitudes can change
12 with regard to whether or not
13 particular --- a particular class of
14 inmate with a particular type of
15 conviction would become less likely
16 to be paroled?

17 A. Right.

18 Q. Was any of that done by what I
19 would call any kind of official
20 writings, official policies being
21 issued saying the Department of
22 Corrections is now taking the policy
23 in sex offender cases that the person
24 should not parole. That their
25 minimum sentence --- is it that ---?

1 A. No. No. You can't do that.
2 It's with --- with the advent of
3 Governor Ridge we entered a crime
4 control period in Pennsylvania as
5 well in the nation. And less people
6 released and certain crimes were
7 highlighted. The Department never
8 and shouldn't tell us because there's
9 individual exceptions all over the
10 board, this guy can never go home or
11 that guy can never go home. They
12 left it up, generally, to our
13 discretion. But you can tell, you
14 know, what's going to happen just by
15 the parole outcomes and by what
16 people are saying and things like
17 that. But they really can't say to
18 you can't release --- you can't
19 recommend parole on a person when
20 he's minimal because, really, at that
21 point, we're second guessing the
22 Courts. And the Courts say this is
23 his minimal. He has to be
24 considered.

25 Q. Okay. We had talked earlier

40

1 about an inmate being recommended to
2 take sex offender treatment.

3 A. Right.

4 Q. And if the Board had
5 recommended --- had stated that they
6 wanted the individual to take sex
7 offender treatment programming then
8 if the inmate had not done that they
9 simply --- they weren't going to get
10 parole.

11 A. Right.

12 Q. Is that an accurate statement?

13 A. And we told the inmates that.
14 And that was accurate. Find that in
15 writing, you won't.

16 Q. Okay. But it's the reality of
17 the situation and the inmates would
18 actually be informed by the staff of
19 that?

20 A. Right up front.

21 Q. And would it be fair to say
22 that the staff was telling that
23 inmate that --- so that --- because
24 the staff wanted to fairly inform the
25 inmate of what the inmate needed to

1 do if they expected to really get
2 released?

3 A. Right. Because it'd be very
4 unfair at the last minute, two years
5 or three years out or six months, I'd
6 say you got to do this. And that's
7 not right. And the stability of your
8 institution depends on how well you
9 handle the parole situation, how fair
10 you are.

11 Q. Is it fair to say that with
12 the sex offender treatment
13 recommendation that you guys would
14 say, --- tell the inmate, look, if
15 you don't do this you're not getting
16 paroled, but that would not
17 necessarily be the case if the Board
18 had recommended some other treatment
19 plan that, you know, didn't carry the
20 same kind of weight as the sex
21 offender program?

22 A. The sex offender program is
23 certainly the most --- the sex
24 offender thing is the biggest issue.
25 If a guy --- drug and alcohol, you

1 really don't want to put them back
2 out unless they've had some kind of
3 treatment. People have hurt people,
4 certain types of those types of guys,
5 the ones who enjoy hurting people,
6 what you find out that's the type of
7 guy that, you know, go through some
8 kind of thing, I wouldn't do anything
9 with. Not going to a vocational
10 program, not going to an educational
11 program, minor misconducts, to me
12 that doesn't, you know, that
13 shouldn't separate who goes home from
14 who doesn't go home.

15 Q. Okay. And in your experience
16 is that actually the case like with
17 some of the stuff about misconduct or
18 not doing educational or vocational
19 stuff. That doesn't have the
20 absolute foreseeability like the sex
21 offender thing has of, you know, sex
22 offender you don't do it you're just
23 not getting paroled, but if it's the
24 vocational or educational stuff, even
25 if they don't do it they still have a

1 chance of getting released?

2 A. Right. The sex offender is
3 more certain.

4 Q. Okay.

5 A. That's more certain than any
6 of them.

7 Q. Would it be fair to say it's
8 absolutely certain?

9 A. It's so certain that even the
10 ones you recommend don't go home.

11 Q. Okay. Can you ever recall in
12 your experience, someone who the
13 Board said we want him to do sex
14 offender treatment and the inmate did
15 not do sex offender treatment where
16 the inmate was actually paroled or
17 re-paroled?

18 A. Again, let me go back. There
19 was --- there was a domestic
20 relations thing where they had gotten
21 something fouled up. They thought a
22 rape had occurred and it hadn't, that
23 they let go because we had pointed it
24 out to them. I also remember --- and
25 I can't give you specifics, in a

1 couple of occasions where you had a
2 19-year old man and a 16-year old kid
3 and to me that three year --- that
4 didn't seem to me to be an adult ---
5 it seemed to me to be a child and a
6 child. And we could recommend in
7 those cases --- and I think there's
8 one or two of them, we're not going
9 to put into a whole sex offender
10 program this is part of a teenage
11 type of --- it was adolescent
12 behavior. It's developmental
13 behavior rather than deviance. I
14 don't know if I made that clear.

15 Q. No, I understand.

16 A. Yeah.

17 Q. And --- well, in those cases
18 were you guys able to convince the
19 Board that sex offender treatment
20 just wasn't appropriate for those
21 particular individuals?

22 A. Yes. The Board is in an
23 unenviable position. Nobody cheers
24 when they let somebody go. They've
25 had some very unfortunate releases

45

1 over the last 15 years. Mudman Simon
2 and Reggie McFadden, people who have
3 done terrible things out there. If
4 they feel that we're reasonable and
5 they have something to hang their hat
6 on, sometimes they will take the
7 chance. Sometimes. But ultimately
8 it is their responsibility whether
9 they release the guy or not.

10 Q. Okay. In your experience, if
11 the Board has required sex offender
12 treatment and the Department agrees
13 that sex offender treatment is --- is
14 it a reasonable ---

15 A. Right.

16 Q. --- condition for the
17 particular individual and the
18 individual has not done sex offender
19 treatment, do you recall any of those
20 situations where the Board has
21 actually released?

22 A. Never. Never.

23 Q. So the only exceptions that
24 you can recall are ones where the
25 Department of Corrections through

1 their, I would say, perhaps more
2 intimate knowledge of the inmate and
3 the circumstances of his offense have
4 been able to convince the Board that
5 sex offender treatment just wasn't an
6 appropriate treatment for this
7 particular individual?

8 A. Right. That's correct.

9 Q. Okay. And if the Board --- if
10 you're able to ultimately convince
11 the Board that sex offender treatment
12 was just not appropriate for this
13 particular person then there were a
14 couple of instances where individuals
15 were released?

16 A. That's correct.

17 Q. But if the Board felt sex
18 offender treatment was appropriate
19 and the Department agreed that sex
20 offender treatment was appropriate
21 and the inmate doesn't do it --- ?

22 A. He isn't going home.

23 Certainly.

24 Q. As from your review of the
25 DC-13A forms for Mr. Defoy, is it

1 accurate to say that in his case the
2 Department agreed that sex offender
3 treatment was an appropriate
4 condition for him?

5 A. Early on?

6 Q. Yes.

7 A. Yeah, my guess is our
8 reasoning in that was, I'm guessing,
9 that he had all this time left, we'll
10 cross that bridge later, he's done
11 his violator time, let him go to the
12 new one, he's got six and a half
13 years for us to fight with him and
14 get him into the program, he's had
15 six and a half years for his appeal
16 process to go through, and that's my
17 guess as to why he was recommended.

18 Q. And the switch in 2000 was
19 most likely attributable to the fact
20 that the Board has made it clear that
21 there's not going to be a parole
22 without the sex offender treatment.

23 A. Right. They dug in their
24 heels. And we're not going to second
25 guess that because eventually we're

1 going to say that anyway. I think
2 from a pure fairness standpoint with
3 the inmate, you have to tell them all
4 along this, look, this is something
5 eventually you have to go to. If
6 they have a long enough time --- and
7 the amount of admitters among sex
8 offenders is very small, at the
9 beginning, and so it's a process you
10 go through to get them to finally
11 take responsibility. But we can ---
12 it's something we can wait out.

13 Q. Okay. We talked some about
14 attitudes changing with time whether
15 it's a formal policy or just an
16 informal policy that's being
17 implemented. With regard to your
18 experience with the sex offender
19 requirement and what we've discussed
20 where if the person is told that they
21 need to take sex offender treatment
22 and they don't do it, they aren't
23 getting paroled, has that been a
24 situation that has existed
25 consistently throughout your time as

1 you were working with the Department
2 of Corrections?

3 A. Yes. It probably was --- I
4 think the sex offender programs were
5 started --- I was at Rockview then,
6 my guess is in the mid to late '80s,
7 and from then on it was if you don't
8 go you're not going home.

9 Q. Okay. And so that --- that
10 practice or reality, whatever you
11 want to call it, has been in
12 existence, based on your experience
13 of working with the Department of
14 Corrections, from the mid, at least,
15 the mid '80s on through today?

16 A. Yes.

17 Q. And so that's not one of the
18 things that changed over the course
19 of time --- well, I guess and
20 I'm ---.

21 A. I think it's gotten tighter in
22 terms of who's going to be released.
23 But the stance that you have to get
24 treatment before you go, now, that's
25 a 20-year old --- that's 20-year old

1 practice.

2 Q. With the sex offender ---

3 A. Yes.

4 Q. --- program?

5 A. Yes. Uh-huh (yes).

6 Q. Okay. And that's something
7 that you have, yourself, witnessed as
8 a reality of the parole system and
9 the way it's administered in the
10 Commonwealth of Pennsylvania?

11 A. Yes.

12 Q. Okay. When you talk to the
13 inmates or you --- excuse me, the
14 counselors talk to the inmates about
15 wanting to take sex offender or the
16 need to take sex offender, does the
17 issue of, hey, I got my case on
18 appeal, you know, does that get
19 brought up and discussed with the
20 inmate?

21 A. Yeah. The inmates will say
22 --- and by the way, this is the rule
23 not the exception, ---

24 Q. Okay.

25 A. --- the inmates will say, I

1 didn't do it. That is very, very
2 common among sex offenders. And
3 they'll say I can't do anything
4 because my case is under appeal and
5 my attorney advised not to admit to
6 it, not to get into the program, not
7 to go to the program. And that is
8 discussed the inmate. Now, what I
9 told them is when you get here you're
10 guilty. We don't --- we're not a
11 courtroom. You're convicted. This
12 is what you did. As far as I'm
13 concerned that's what you did so this
14 is what you have to do. You want to
15 do that with your --- you want an
16 appeal process, you know, once you
17 lose your appeal maybe you might
18 think of admitting, but regardless of
19 the appeal until you admit and go
20 into the program, you're not going to
21 go home.

22 Q. Did you ever confirm with
23 inmates who said, look, I testified
24 at my trial that I didn't do this
25 and, you know, I could get into

1 trouble if I now say I really did do
2 it because I'd basically be saying I
3 committed perjury.

4 Q. That's --- that's a common
5 occurrence. Certainly. They're
6 saying I'm not going to change
7 anything. I'm going to win this.
8 I'm going to whatever. But again, to
9 us he's convicted --- he's a
10 convicted sex offender.

11 Q. Under the sex offender program
12 --- the program is actually
13 administrated by the Department of
14 Corrections; is that correct?

15 A. That's correct.

16 Q. Okay. The inmates are not
17 granted any type of immunity from
18 having the statements that they make
19 during the sex offender treatment
20 program from being used against them
21 in the future; is that correct?

22 A. That's a legal question for
23 which I don't really know the answer.
24 I don't know what's immunity and what
25 isn't. Supposedly, and this is why

53

1 they don't want non-admitters and
2 deniers in the programs, what's held
3 in those groups is confidential, but
4 I'm sure from a criminal standpoint
5 there's nothing confidential in jail.
6 But, Counsel, I really don't know the
7 answer to that. I don't know whether
8 after a trial and all that what he
9 says in that group can be held
10 against him or not. I don't know the
11 answer to that.

12 Q. Okay.

ATTORNEY PATTON:

18 A. Thank you.

ATTORNEY BRADLEY:

20 I just have a few
21 questions.

22 EXAMINATION

23 BY ATTORNEY BRADLEY:

24 Q. I think we started with your
25 employment history. Could you just

1 briefly describe your post high
2 school education?

3 A. Yeah. I have a bachelors
4 degree in psychology from Versinus
5 (phonetic) College and a masters in
6 social work from Bryn Mawr College,
7 School of Social Work.

8 Q. You talked about how that
9 looking at, for example
10 reclassification summary and seeing
11 that an inmate has not participated
12 of his own accord with sex offender
13 treatment and you say that it's
14 fairly predictable that that inmate,
15 in your terms, won't be going home
16 and I assume by that you mean he
17 won't be paroled?

18 A. That's correct.

19 Q. Even though you can make that,
20 I guess, prediction, if you want to
21 call it that, at least from the
22 Department of Corrections standpoint,
23 are all of these inmates given
24 individualized assessments in making
25 the recommendations whether to be

1 paroled or not?

2 A. That's correct.

3 Q. So you don't simply look at
4 that one block to see whether they've
5 participated in sex offender
6 treatment and then go to the end of
7 the thing and not supported?

8 A. You evaluate the whole guy and
9 you can see that in these reports
10 because they review the work and
11 housing reports because sometimes one
12 thing will balance another.

13 Q. So even though you may be able
14 to predict the outcome in terms of
15 parole with respect to one aspect of
16 it, you're not suggesting that
17 they're not being individually
18 assessed on an inmate-by-inmate
19 basis?

20 A. No. Every inmate is
21 considered on his own merits
22 including the facts of his crime.

23 Q. One other thing and I don't
24 know if it was touched upon or came
25 up tangentially, but would the status

1 of an inmate's conviction affect a
2 recommendation and just to clarify,
3 in this case, there was some evidence
4 and I think Mr. Defoy mentioned it in
5 one of those papers that his case was
6 on appeal and I believe at one point,
7 he did obtain, at least in a lower
8 court, a reversal of his conviction,
9 would that information affect the
10 recommendation?

11 A. As long as that crime is held
12 on his record, whether it's under
13 appeal, whether whatever, he is still
14 guilty of that in our eyes. Now,
15 often we don't know when there's that
16 kind of --- that kind of court
17 action. We would know when the clerk
18 of courts sends us this thing this
19 charge has been nulled or dismissed
20 or whatever. But something under
21 appeal, something that's been
22 reversed and appealed to a higher
23 court to us he's still --- he's ---
24 because that doesn't take the charge
25 off of his record.

1 Q. Okay. You talked about and it
2 came up in the context of sex
3 offender treatment, but this idea
4 that you have to get treatment before
5 you go home and, again, that's
6 getting treatment before you are
7 paroled. And again, that was in the
8 context of sex offender treatment.
9 Philosophically, is the same
10 approach, and I believe you touched
11 on this, but is the same approach
12 used with DUI offenders or drug and
13 alcohol violators or persons with
14 assaultive behavior or other
15 classifications of offender?

16 A. Yeah. If you have a guy who's
17 been a long term alcoholic or drug
18 addict who has --- particularly one
19 who has aggressive crimes along with
20 domestic crimes, stick-ups, stuff
21 like that, if you have --- aggravated
22 assault is a large category of
23 inmates and murder in the state
24 prisons. Some of them you're going
25 to mandate you have to go to

1 something or other before you even
2 let that type of guy go,
3 particularly, if the crime is
4 particularly strange or bad or if
5 it's unprovoked or things like that.
6 So there are other categories of
7 people who we would not let go if
8 they didn't --- if they didn't show
9 some progress.

10 Q. And I guess given your
11 background of 30 years in the
12 Department of Corrections, do you see
13 anything wrong with the approach of
14 requiring someone to go through
15 treatment before they're released
16 back onto the street?

17 A. No, I don't.

18 Q. Can you elaborate on that?

19 A. You know, I'm not --- first of
20 all, it's a general --- institutions
21 are run better when inmates are
22 involved in programs. And, you know,
23 the more that are involved the better
24 off the jail runs. Plus the
25 programs, themselves, give inmates

1 hope. It gives them hope for the
2 future and things like that. I'm not
3 going to argue because I really don't
4 believe in any of the statistics and
5 I'm not sure what works or whatever.
6 But, at least, if a guy goes through
7 the motions going through a program
8 you know he's trying. You know that
9 he's trying. I'm not sure that any
10 one assessment is any better than the
11 other. But the only assessment we
12 have is really program completion,
13 he's been willing to go through a
14 program that may have an effect on
15 whether he stays out or not. And so
16 that's why the whole program is
17 important.

18 ATTORNEY BRADLEY:

19 I think that's all the
20 questions I have. Mr. Patton
21 may have some follow-ups.

22 ATTORNEY PATTON:

23 Yes. And I forgot to
24 ask a couple about a subject
25 that I wanted to ask before.

1 RE - EXAMINATION

2 BY ATTORNEY PATTON:

3 Q. And that was about calculating
4 the minimum and mandatory dates and
5 who does and how that gets done.

6 A. Help. There isn't --- if a
7 guy comes in with straight sentence,
8 two to four or five to ten, it's done
9 by the record office. But it's very
10 clear, the clerk of courts sends us
11 the record. The judge will have date
12 of sentence, he'll have in credit
13 times, the judge sentence. No
14 problem. Easy. When you have
15 violator time --- there is so much
16 case law in this that none of us
17 understand of when the violator time
18 starts, how much credit they get,
19 when they --- it's totally confusing
20 to me. What will happen is, if a guy
21 violates, the Parole Board comes back
22 to us and says, this amount of days
23 goes to his new time, this amount of
24 days to his old time and we calculate
25 that there. It is under so many

1 challenges. It is so confusing half
2 the time that --- and the inmates
3 complain about it all the time.
4 They should have gotten this amount
5 of time or they should have gotten
6 that amount of time. It is
7 eventually done by the records office
8 in the institutions, but under the
9 direction of the Parole Board.

10 Q. Okay. So when it's a violator
11 coming in it's the Board that
12 transmits the information to the
13 Department of Corrections as to how
14 much time the person has to serve as
15 a violator ---

16 A. Right.

17 Q. --- and how much --- if the
18 person's been in custody how much of
19 that time goes to the old sentence
20 and how much, if any, should go to
21 whatever new sentence the person has?

22 A. That's correct. And the time
23 will start on the date --- there's
24 different times it starts. There's
25 one when their warrant drops, you

1 know, because if he's picked up in
2 June by the Philadelphia Police, and
3 the warrant doesn't drop until July
4 20th, then that time goes to the new
5 time and it's all --- and nobody
6 understands --- there's been one
7 Pennsylvania Superior Court, Supreme
8 Court decision after another and I
9 still --- that credit time thing is
10 an endless boggle, frankly.

11 Q. Okay. But it should be done
12 --- is it by the Parole Boards ---
13 some employee of the Board giving
14 direction to the Department of
15 Corrections if it's a convicted
16 parole violator ---

17 A. Right.

18 Q. --- who's coming back. The
19 Board giving the Department of
20 Corrections the information of this
21 is how much time the person has in,
22 this is how much that goes to the
23 violator sentence. This is how much
24 that goes to the new sentence?

25 A. Right. And I believe they

1 compute the new max. Became if he is
2 a convicted parole violator he loses
3 his street time. It goes back on top
4 of his sentence. If he is a
5 technical parole violator he loses
6 his street time if he's delinquent.
7 He loses the time that he was on the
8 run. Then they'll come back and
9 they'll say and now this guy's
10 convicted for a variety of reasons,
11 next review date will be credit time
12 for old sentence this, you know, on
13 the old one and there's a couple of
14 other things they'll say. But
15 generally we do it at their
16 direction.

17 Q. Okay. And if it's a green
18 sheet coming in on somebody who's a
19 convicted parole violator, will
20 generally the green sheet say the new
21 max ---

22 A. Yes, that's the new max.

23 Q. --- is X?

24 A. The new max is X.

25 Q. Okay. And that's from the

1 Board?

2 A. And that's from the Board.

3 Q. And they do that calculation.

4 You guys just trying to implement the
5 calculations given to you ---

6 A. Right.

7 Q. --- by the Board?

8 A. Right.

9 ATTORNEY PATTON

10 That's just what I
11 wanted cover.

12 ATTORNEY BRADLEY:

13 No questions.

14 A. Thank you very much.

15 ATTORNEY PATTON:

16 Thank you.

17

18 * * * * *

19 DEPOSITION CONCLUDED AT 9:58 A.M.

20 * * * * *

21

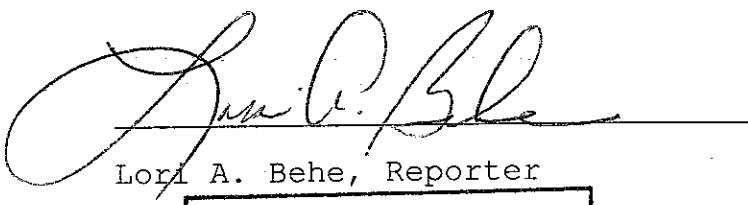
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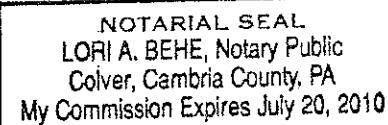
24

25

1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF CAMBRIA)
3
4 C E R T I F I C A T E
5
6
7 I, Lori A. Behe, a Notary Public in and for
8 the Commonwealth of Pennsylvania, do hereby
9 certify:
10
11 That the witness whose testimony appears in
12 the foregoing deposition, was duly sworn by me on
13 said date and that the transcribed deposition of
14 said witness is a true record of the testimony
15 given by said witness;
16
17 That the proceeding is herein recorded fully
18 and accurately;
19
20 That I am neither attorney nor counsel for,
21 nor related to any of the parties to the action in
22 which these depositions were taken, and further
23 that I am not a relative of any attorney or
24 counsel employed by the parties hereto, or
25 financially interested in this action.



Lori A. Behe, Reporter



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DC-13A

CONFIDENTIAL

RECLASSIFICATION SUMMARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

CHECK PAROLE SUMMARY REPAROLE SUMMARY
 TOPIC OTHER _____

PREPARED AT SCI-Houtzdale 5-7-97

DATE

SID NUMBER	DC NUMBER	PBP NUMBER	NAME					AGE	
19268847	AK-1017		DEFROY, Robert					45	
EXPIRATION MINIMUM 1-29-82	EXPIRATION MAXIMUM 9-29-92	EFFECTIVE DATE 9-29-79		TIME SERVED TO DATE	EXPIRATION OF ½ MINIMUM	EFFECTIVE DATE OF PV RETURN	CLASS STATUS 3	MEDICAL PROFILE PULHES T 1111223	
PBP DOCKET STATUS	<input type="checkbox"/> FIRST HEARING <input type="checkbox"/> REVIEW HEARING	TOTAL ARRESTS	JUVENILE ARRESTS	JUVENILE COMMITMENTS	ADULT ARRESTS	CONVICTIONS	COMMITMENTS	PROBATION VIOLATIONS	PAROLE VIOLATIONS

ACCOMPlice(S) AND KNOWN DISPOSITION(S)

None

SENTENCE STATUS CHANGE AND/OR DETAINER(S) STATUS
-25-93; York Co.; IDSI; Stat. Rape, CMM; CP#3623, 1991ISCONDUCTS:

See attached misconduct report.

Steve Kechisen
Corrections Counselor II

EDUCATIONAL/VOCATIONAL: WRAT scores dated 3-23-84 revealed:
Reading:6.9; Spelling:5.7; Arithmetic:5.3

DeFoy resides in C Unit. He was scheduled to take the TABE test on 8-96 and 12-96, however, he refused to take the test.

Education Department

OCATIONAL:

DeFoy arrived at SCI-Houtzdale on 5-8-96 and was assigned to Culinary PM and is presently assigned a Blockworker.

Susan McQuillen
Voc. Placement Coordinator Clerk

PETITIONER'S
EXHIBIT

A

CONFIDENTIAL

Robert DeFoy, AK1017
Parole Summary
Page -2-

MEDICAL: Mr. DeFoy has a previous +PPD. He is not receiving any medical treatment at this time. He wears corrective lenses and he has no dental problems.

Medical Department

PSYCHOLOGICAL/PSYCHIATRIC: A mental health evaluation has not been requested by the Pennsylvania Board of Probation and Parole.

Steve Kechisen
Corrections Counselor II

SEX OFFENDER TREATMENT: Mr. DeFoy was prescribed sex offender treatment. He refused to participate under the premise that his case was under appeal.

Steve Kechisen
Corrections Counselor II

DNA ACT NOTIFICATION: Mr. DeFoy is not subject to DNA Act Requirement.

Steve Kechisen
Corrections Counselor II

RE-RELEASE: Mr. DeFoy has not participated in any form of pre-release programming since his arrival at SCI-Houtzdale.

Steve Kechisen
Corrections Counselor II

COUNSELOR'S EVALUATION: Mr. DeFoy, age 45, is a CPV serving an original 10 to 20 year sentence for Robbery. As recorded on 11-23-93 the Pennsylvania Board of Probation and Parole indicated to re-role Mr. DeFoy to his state detainer sentence. His detainer sentence is 6 years, 6 months to 13 years for Statutory Rape, IDSI, and CMM. As recorded on 4-22-97, the Pennsylvania Board of Probation and Parole rendered the following decision: modify board action of 11-23-93 and 11-5-93 by temporarily rescinding the parole portion due to misconducts and now: list for re-interview on the next available docket.

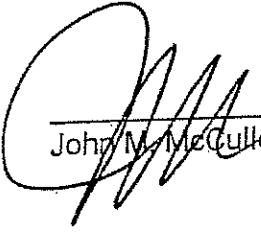
Mr. DeFoy was received at SCI-Houtzdale 5-8-96 from SCI-Dallas as a custody level 2 transfer. He was misconduct free at SCI-Dallas. Upon his reception to this institution the following behavior and therapeutic expectations were identified: no misconducts, earn positive housing/work reports, drug & alcohol education, stress & anger and sex offender treatment. He received one Class I misconduct 11-6-96 for Refusing to obey an Order. He has earned above average housing/work reports.

Steve Kechisen
Corrections Counselor II

Robert DeFoy, AK1017
Parole Summary
Page -3-

STAFF RECOMMENDATIONS:

Mr. DeFoy, age 45, is a CPV serving an original 10 to 20 year sentence for Robbery. As recorded on 11-23-93, Mr. DeFoy was to parole to a state detainer sentence of 6 years, 6 months to 13 years for Statutory Rape, IDSI and CMM. A new board action dated 4-22-97 lists Mr. DeFoy for reinterview on the next available docket. Since being received at SCI-Houtzdale, Mr. DeFoy has received one Class I misconduct for Refusing to Obey an Order. He has earned positive housing/work reports. Based on his positive adjustment, Staff supports parole to the state detainer sentence. He was informed of this decision and all aspects of Act 159.


John M. McCullough, Superintendent

5/13/97
ate

VM:SK:sjh

DC-13A

CONFIDENTIAL

RECLASSIFICATION SUMMARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

CHECK PAROLE SUMMARY REPAROLE SUMMARY
 TOPIC OTHER

PREPARED AT SCI-Houtzdale

5-18-98

DATE

AGE
46

SID NUMBER 09268847	DC NUMBER AK-1017	PBP NUMBER	NAME DEFOY, Robert		EXPIRATION OF ½ MINIMUM	EFFECTIVE DATE OF PV RETURN	CLASS STATUS	MEDICAL PROFILE 2"0" PUL HEST	
EXPIRATION MINIMUM 9-29-82	EXPIRATION MAXIMUM 9-29-92	EFFECTIVE DATE 9-29-72	TIME SERVED TO DATE					PROBATION VIOLATIONS	PAROLE VIOLATIONS
PBP DOCKET STATUS	<input type="checkbox"/> FIRST HEARING <input type="checkbox"/> REVIEW HEARING	TOTAL ARRESTS	JUVENILE ARRESTS	JUVENILE COMMITMENTS	ADULT ARRESTS	CONVICTIONS	COMMITMENTS		

ACCOMPlice(s) AND KNOWN DISPOSITION(S)

None

SENTENCE STATUS CHANGE AND/OR RELEASE DATE (if any)
1-25-93, YORK CO. (Conv 6/12-15 yrs.) IDSI, Stat. Rape, CMM CP# 3623, 1991

MISCONDUCTS:

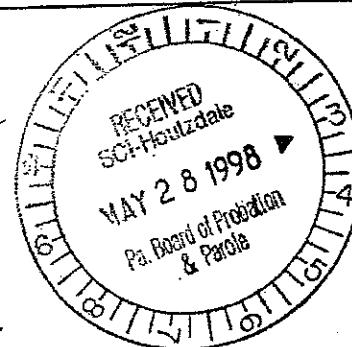
See attached DC-17.

Steve Kechisen
Corrections Counselor II

EDUCATIONAL/VOCATIONAL: TABE scores dated — revealed:
Reading:— Spelling:— Arithmetic:—

Mr. DeFoy resides in C Unit. He was scheduled for the TABE test on 8-96 and 12-96, however he refused to complete the test on both occasions.

Sharon Schall
Education Department

VOCATIONAL:

Mr. DeFoy arrived at SCI-Houtzdale on 5-7-96 and was assigned to Culinary PM and is currently assigned as a Blockworker.

Susan McQuillen
Corr. Emp./Voc. Coordinator

PETITIONER'S
EXHIBIT
B

CONFIDENTIAL

(OVER IF NECESSARY)

Robert DeFoy, AK1017
Parole Summary
Page -2-

MEDICAL: Mr. DeFoy has a medical history of +PPD, he needs a yearly chest X-Ray. His vision and dental are okay. He has no physical limitations.

Medical Department

MENTAL HEALTH EVALUATION: A mental health evaluation has not been requested.

Steve Kechisen
Corrections Counselor II

SEX OFFENDER TREATMENT: Sex Offender programming has been recommended, however Mr. DeFoy is not interested in participating.

Steve Kechisen
Corrections Counselor II

DNA ACT NOTIFICATION: Inmate is not subject to DNA Act requirements.

Steve Kechisen
Corrections Counselor II

PRE-RELEASE: Mr. DeFoy has not participated in any form of pre-release programming since his arrival at SCI-Houtzdale.

Steve Kechisen
Corrections Counselor II

COUNSELOR'S EVALUATION: Mr. DeFoy, age 46, is currently serving a 10 to 20 year sentence for Robbery With an Accomplice or While Armed or by Violence. He was recommitted on this offense as a Convicted Parole Violator. His PV maximum date is 6-7-01. Mr. DeFoy currently has a state detainer sentence of 6 1/2 to 13 years for IDS1, Statutory Rape and Corruption of the Morals of a Minor. As recorded on 8-12-97, the Pennsylvania Board of Probation and Parole refused Mr. DeFoy parole and decided to review him on or after June 1998.

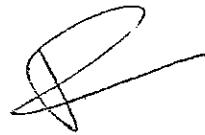
Since his last review, Mr. DeFoy has had no misconducts and earns positive housing/work reports.

Steve Kechisen
Corrections Counselor II

Robert DeFoy, AK1017
Parole Summary
Page -3-

STAFF RECOMMENDATIONS:

Mr. DeFoy, age 46, is currently serving backtime as a CPV on an original 10 to 20 year sentence for the offense of Robbery. Pennsylvania Board of Probation and Parole action of 8-12-97 established a 6-98 review. Since that time he has maintained a misconduct free adjustment. Housing Officers state that he is mature and polite. Work Supervisor states that he works effectively and learns quickly. Based upon his very positive adjustment while incarcerated, Staff supports parole. He was informed of this decision and all aspects of Act 159.



John M. McCullough
John M. McCullough, Superintendent

5/27/98
Date

JMM:SK:sjh

Martin F. Horn
Commissioner



William E. Speck
Deputy Superintendent for
Facilities Management

John M. McCullough
Superintendent

Pennsylvania Department of Corrections
State Correctional Institution at Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000

Phone: (814) 378-1000 FAX: (814) 378-1030

J. Barry Johnson
Deputy Superintendent for
Centralized Services

July 11, 2000

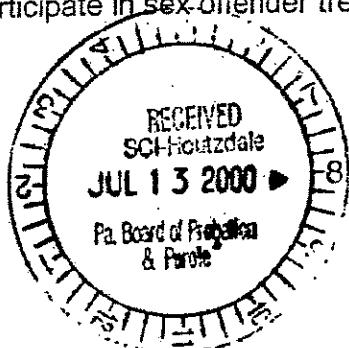
The Honorable William Ward, Chairman
Pennsylvania Board of Probation and Parole
P.O. Box 1661
Harrisburg, PA 17105

RE: DeFoy, Robert, AK1017

Dear Chairman Ward:

Mr. DeFoy is an addition to the August Parole Docket due to material from the PBPP Central Office in Harrisburg not being available for his originally scheduled interview, therefore this update is being submitted in letter form.

Mr. DeFoy, age 48, is currently a convicted parole violator serving backtime on an original 10 to 20 year sentence for Robbery. The minimum and maximum expiration dates are 9-29-82 and 6-7-01. He currently has a 6 ½ to 3 year re-entry detainer for Statutory Rape, IDSI and COMM. Since the original 13A dated 4-25-00, Mr. DeFoy has continued to earn above average housing/work reports. However, he continues to refuse to participate in sex-offender treatment, therefore Staff continues to not support parole.



Sincerely,

John M. McCullough
Superintendent

JMM/MMI/sjh

c: DC-14
DC-15
file

*new
10/21/00*

*Dec
10/21/00*

PETITIONER'S
EXHIBIT
C

DC - 46 (Rev. 7/95)			Commonwealth of Pennsylvania Department of Corrections		
Facility	Date	Number	Name	Cus. Lev. & Code (s)	
HOU	5/8/00	AK1017	Robert Defoy	Z	
Purpose Parole Viol Review			YES	NO	
COMMENTS					
Counselor <u>KETCHISON</u>	<input checked="" type="checkbox"/>		To detainer sent. by law to 13y		
Work Supervisor <u>WILLIAMS</u>	<input checked="" type="checkbox"/>				
Corrections Officer <u>WILLIAMS/MASOLSKY</u>	<input checked="" type="checkbox"/>				
Psychologist					
Unit Mgr., Couns. Supv., CCC Dir. <u>BAER</u>		<input checked="" type="checkbox"/>			
Inmate Program Mgr. <u>MAZURKIEWICZ</u>		<input checked="" type="checkbox"/>	Program resistant		
COIC TURNER		<input checked="" type="checkbox"/>			
<u>Miller</u>		<input checked="" type="checkbox"/>	Yours Detainer, No More, Based on Miller S.C.P. Unsuccessful Completion (Did not apply.)		
Votes Recorded					
STAFF RECOMMENDATIONS					
<p>Defoy, age 48, is currently serving backtime on an original 10 to 20 year sentence for the offense of Rob w/ Accomp. He has a 6 1/2 to 13 year detainer sentence for the offenses of TDST, Stat. Rape & Corr. Neglect of Min. He refuses to participate in Sex Offender Trut. Based upon his refusal to participate in Sex Offender Trut, Staff does not support parole. He was advised of this decision and ATCS.</p>					
Deputy - Centralized Services	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Deputy - Facility Management	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Comments	<u>J. P. Turner</u>				
Sign. of Supt., DCC Dir., Reg. Dir., Commander			Approved	<input checked="" type="checkbox"/>	Disapproved
Comments	<u>J. P. Turner</u>				

DC-13A

CONFIDENTIAL

RECLASSIFICATION SUMMARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

CHECK PAROLE SUMMARY REPAROLE SUMMARY
 TOPIC OTHER _____

PREPARED
AT

SCI-Houtzdale

4-25-00

DATE

SID NUMBER	DC NUMBER	PBP NUMBER	NAME					AGE		
19268847	AK-1017		DeFOY Robert	<i>DPW 10/24/00</i>		3		48		
EXPIRATION MINIMUM	EXPIRATION MAXIMUM	EFFECTIVE DATE	TIME SERVED TO DATE	EXPIRATION OF 1/2 MINIMUM	EFFECTIVE DATE OF PV RETURN	CLASS STATUS	MEDICAL PROFILE			
1-29-72	9-29-82	9-29-92				3	PULHEST			
PBP DOCKET STATUS	<input type="checkbox"/> FIRST HEARING <input type="checkbox"/> REVIEW HEARING		TOTAL ARRESTS	JUVENILE ARRESTS	JUVENILE COMMITMENTS	ADULT ARRESTS	CONVICTIONS	COMMITMENTS	PROBATION VIOLATIONS	PAROLE VIOLATIONS

ACCOMPlice(S) AND KNOWN DISPOSITION(S)

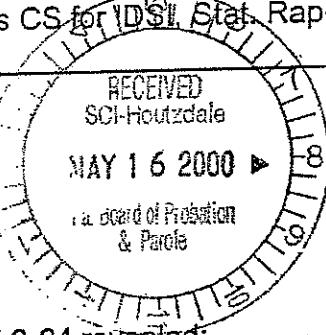
None Listed

SENTENCE STATUS CHANGE AND/OR DETAINER(S) STATUS
 CP#:3623;91 – 1-25-93, York County – 6 1/2 to 13 years CS for ~~1D~~ Stat. Rape, Corrupt Minors

MISCONDUCTS:

See attached DC-17.

Steve Kechisen
Corrections Counselor II



EDUCATIONAL/VOCATIONAL: WRAT scores dated 3-84 revealed:
 READING, 6.9; SPELLING, 5.7; ARITHMETIC, 5.3

Mr. DeFoy resides on C Unit.

Melissa Miller
Education Department

*Doc
10/24/00*

VOCATIONAL:

Mr. DeFoy arrived at SCI-Houtzdale on 5-7-96 and was assigned to Culinary PM and Blockworker.

Susan McQuillen
Corr. Emp./Voc. Coordinator

MEDICAL: Medical History: +PPD, History WPW
 On-Going Treatment: Chronic Clinic
 Medications: NTG
 Vision: Last Exam 2-95 Dental: Last Exam 3-96
 Physical Limitations: No heavy lifting

Medical Department

CONFIDENTIAL

Parole Summary

Page -2-

MENTAL HEALTH EVALUATION: A Mental Health Evaluation will be forwarded to the Institution Parole Office as requested by the Parole Office Supervisor.

Steve Kechisen
Corrections Counselor II

SEX OFFENDER TREATMENT: Sex offender programming has been recommended. Mr. DeFoy denies guilt and refuses to participate.

Steve Kechisen
Corrections Counselor II

DNA ACT NOTIFICATION: A DNA sample material will be required when he turns over to his detainer sentence.

Steve Kechisen
Corrections Counselor II.

RE-RELEASE: Mr. DeFoy has not participated in any form of pre-release programming since his arrival at SCI-Houtzdale.

Steve Kechisen
Corrections Counselor II

COUNSELOR'S EVALUATION: Mr. DeFoy, age 48, is a convicted parole violator serving backtime (40 months) on an original 10 to 20 year sentence for Robbery. He currently has a 6 ½ to 3 year detainer sentence for IDSI, Statutory Rape and Corrupting the Morals of a Minor. Mr. DeFoy was refused re-parole at his last review and as recorded on 7-21-98 will be reviewed in June 2000.

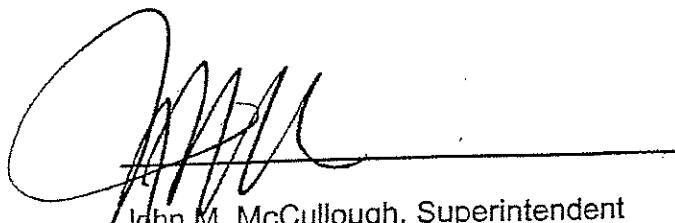
Mr. DeFoy was received at Houtzdale 5-8-96 from SCI-Dallas. Since his last parole interview, he has earned very good housing/work reports and has consistently done this since his transfer to Houtzdale. However there has been no program involvement since his last review.

Steve Kechisen
Corrections Counselor II

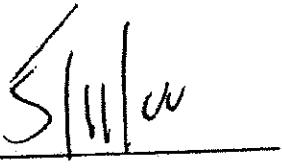
Robert DeFoy, AK1017
Parole Summary
Page -3-

STAFF RECOMMENDATIONS:

Mr. DeFoy, age 48, is currently serving backtime on an original 10 to 20 year sentence for the offense of Robbery With Accomplice. He has a 6 ½ to 13 year detainer sentence for the offenses of IDS1, Statutory Rape and Corruption Morals of Minor. He refuses to participate in sex offender treatment. Based upon his refusal to participate in sex offender treatment, Staff does not support parole. He was informed of this decision and all aspects of Act 159.



John M. McCullough, Superintendent


Date

JMM:SK:sjh